

REMARKS

This document relates to issues raised in the examiner's office action mailed July 20, 2007. In that office action, claims 1-26 were rejected by the examiner under 35 U.S.C. § 102 and/or 35 U.S.C. § 103. A primary reference used by the examiner in rejecting the claims is Ginsburg et al (US 6,595,856).

Claims 1-26 have been cancelled from the application, and new claims 27-72 have been substituted therefore. No new matter has been added. It is to be noted that claims 1-26 have not been canceled for purposes relating to patentability. Rather, claims 27-72 are being substituted for claims 1-26 for purposes of clarification, and in order to present to the examiner a clean set of claims which reflect all of the presently presented claim features.

During a telephonic interview between the undersigned attorney and the examiner on 11/19/2007, the various rejections of the claims were discussed with respect to the present invention and the cited prior art references. A summary of the telephonic interview is presented below. At the conclusion of the telephonic interview, it was agreed that: (1) it is possible to identify a file stored in computer memory using an identifier other than the name of file name of the file; (2) Ginsburg does not appear to explicitly teach parsing a selected computer implemented process in order to identify at least a first portion of the process that does not change during execution of the process; (3) claim 19 would overcome the 35 USC Section 101 rejection if amended to include a CPU and memory.

On pages 4-9 of the office action, the examiner cites various locations in the specification of Ginsburg which purportedly teach the features of claims 1-6, 10, and 19-24. However, a review of the portions of Ginsburg cited by the examiner reveals that Ginsburg does not expressly teach or suggest at least the portion of the claimed features recited by claims 1-6, 10, and 19-24.

It is believed that presently pending claims 27-72 are neither anticipated by nor obvious in view of Ginsburg and/or the other cited prior art references of record.

For purposes of illustration, portions of the teachings of Ginsburg are discussed in greater detail below.

According to the teachings of Ginsburg:

*A stored verification code is generated at the game manufacturer's factory using accurate and secure (or "trusted") copies of the software and data files designated for use in that game. As discussed below with reference to*

*FIG. 4, the verification codes are stored in authentication ROM 310 by the manufacturer to provide the necessary reference identifier so that suspect files may be tested. (Ginsburg 3:34-40)*

...  
*CPU 305, using software stored in boot ROM 320, reads game software and data files from mass storage 270 over data link 275, placing images (copies) of those files in RAM 330 by conventional means. Authentication software, located in one embodiment of the present invention within boot ROM 320, computes a "live" verification code for each of the suspect files loaded into RAM 330. The live code is computed using the same method used to generate the stored verification code located in authentication ROM 310 (further described below). (Ginsburg 3:53-62)*

...  
*The process by which the game software and related data files are each authenticated is described by reference to FIG. 5. As an initial step (described above), the game software and data files 505 are loaded into gaming device RAM 330 by reading mass storage media 270 in step 510. At this point, the loaded files are considered suspect because the mass storage 270 or communications link 275 may have been tampered with.*

*The actual authentication process 599 begins with step 520, where a live verification code is computed for each and every suspect file (i.e., for the game software program and for each data file accompanying it) just read into RAM. (Ginsburg 7:65- 8:12)*

From this teaching, it is clear that, in the system of Ginsburg, the game software and data files which have been loaded from the mass storage media into that gaming device RAM are each considered to be "suspect files," and each may be authenticated using the "live" verification code authentication technique of Ginsburg.

Ginsburg appears to make no distinction between game software/data files which will not change during execution of a process and game software/data files which will change during execution. Moreover, there appears to be no teaching or suggestion in Ginsburg for parsing the various portions of gaming software programs in order to distinguish between portions which do not change during execution of gaming software program, and portions which do change during execution of gaming software program.

Accordingly, it is believed that Ginsburg does not teach or suggest parsing a selected process in RAM to distinguish between portions of the selected process which does not change during execution of the process and portions of the selected process which does change during execution of the process. Additionally, it is believed that Ginsburg does not teach or suggest parsing a selected process and/or program stored at one or more file storage devices to distinguish between portions of the selected process/program which does not change during execution of the process/program and portions of the selected process/program which does change during execution of the process/program.

Additionally, according to the teachings of Ginsburg, verification/authentication of a given the suspect file is accomplished by generating a "live" verification code representing the selected suspect file, and comparing the generated "live" verification code to a corresponding verification code stored in authentication ROM 310. The authentication ROM includes only file verification codes, and does not include the actual data or code.

While the verification codes in the authentication ROM and/or RAM may serve as a representation of actual code or data, the verification codes themselves are not the same as the actual code or data. For example, a verification code representing executable game software code is not itself executable code.

It is believed that Ginsburg does not appear to teach or suggest, either expressly or inherently, storing executable game code in the authentication ROM 310.

Further, it is believed that Ginsburg does not teach or suggest, either expressly or inherently, performing binary comparisons (e.g., bit-by-bit comparisons and/or byte-by-byte comparisons) of executable code identified in RAM against executable code identified on one or more file storage devices.

Because claims 27-72 are believed to be allowable in their present form, many of the examiner's rejections in the Office Action have not been addressed in this response. However, applicant respectfully reserves the right to respond to one or more of the examiner's rejections in subsequent amendments should conditions arise warranting such responses.

Further, to the extent that the examiner relies upon the inherent teachings of Ginsburg (and/or other cited prior art references), the examiner is reminded that any assertions of inherency in the teachings of the reference(s) must comply with MPEP 2112, Section IV, which states (in part):

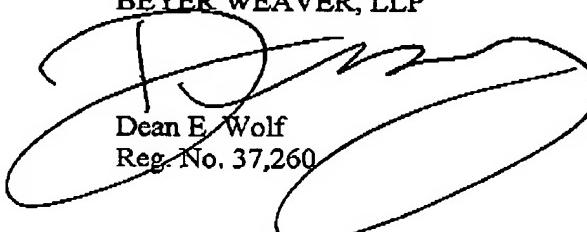
*...The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed.*

*Cir. 1993)...In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)... "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)(Emphasis Original)..."*

Thus, in order for the examiner to establish a prima facie case of inherency in accordance with MPEP 2112, Section IV since, for example, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic(s) of a reference (as interpreted by the examiner) necessarily flow from the teachings of that reference.

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,  
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